MEMORANDUM

TO:

Government Operations and Fiscal Policy Committee

FROM:

Justina J. Ferber, Pagislative Analyst

SUBJECT: Ethics Commission Update

Those following persons may be present for the update:

Nina Weisbroth, Chair, Ethics Commission

Stuart Rick, Vice-Chair, Ethics Commission

Robert Cobb, Chief Counsel/Staff Director, Ethics Commission

Edward Blansitt, Inspector General

Fariba Kassiri, Assistant Chief Administrative Officer

Edward Lattner, Senior Assistant County Attorney

Kaye Beckley, Manager, Business Operations and Performance Division, OHR

There are two Ethics Commission issues for follow-up with the GO Committee:

- 1. Inspector General's Report and Recommendations
- 2. Lobbyist Registration Fee

IG Report

The GO Committee met with representatives of the Ethics Commission, Executive Staff and the Inspector General's office on June 25, 2012 to discuss the IG's report entitled *Review of Certain Montgomery County Ethics Activities*. The GO Committee requested an update in the fall on the progress made by the Ethics Commission and Executive staff on the IG's recommendations. Executive staff is making progress in addressing its portion of the IG's recommendations and the CAO's written comments regarding progress on the report are at ©7 entitled "CAO Audit Response Form".

For purposes of this meeting, Council staff feels it would be an efficient format to review the Ethics Commission memo at ©1 presenting a status of responses to the Inspector General's recommendations. The memo on ©6 summarizes the points made in the status memo. Additional comments by Executive Staff and/or the Inspector General will be made as each recommendation is reviewed by the Commission.

Included in this packet at ©9 is an excerpt from the IG's Annual Report of Activity for the Fiscal year Ended June 30, 2012. This report provides a summary of the *IG Review of Certain Montgomery County Ethics Activities* and a good description of responses to the report and key outcomes.

Lobbyist Registration Fee

As a follow-up to the June 25 GO Committee discussion of the lobbyist registration fee, the Ethics Commission responded to a memorandum at ©16 from GO Committee Chair Navarro related to lobbyist registration issues. A summary of the Ethics Commission responses at ©13 is below:

- 1) included links to county and state laws as they relate to lobbying and forwarded by separate email a list of lobbyists registered in Montgomery County;
- 2) agreed that each person conducting lobbying activities for a client should separately register to lobby:
- 3) noted there is no enforcement program in place to enforce County Ethics law as it relates to lobbying in Montgomery County and additional resources would be necessary to ramp up the lobbying enforcement program;
- 4) advised that raising the lobbyist registration fee is unnecessary, especially if the fee structure is changed so that each person conducting lobbying activities for a client should separately register to lobby and suggested a well-thought out educational campaign to promote compliance; and
- 5) suggested that if changes to the Public Ethics Law are considered then the current lobbying fee for nonprofit organizations should be examined.

Attachments:	©1	October 22, 2012, Memo from Robert Cobb, Status of Response to				
	Inspector General Recommendations					

- ©6 October 22, 2012, Memo from Robert Cobb, Summary of Status Memo
- ©7 October 2012 CAO Audit Response Form
- ©9 October 1, 2012, OIG Annual report of Activity Excerpt
- ©13 October 3, 2012, Memo from Robert Cobb re Lobbying Fees
- ©16 July 5, 2012, Memo from GO Committee Chair Navarro
- ©17 June 25, 2012, GO Packet (background on lobbyist registration issues)



MONTGOMERY COUNTY ETHICS COMMISSION

MEMORANDUM

October 22, 2012

To: Government Operations & Fiscal Policy Committee

From: Robert Cobb Robert CM

Staff Director/Chief Counsel

Subject: Status of Response to Inspector General Recommendations

The following represents the Ethics Commission's perspective on the status of the response to recommendations made in the Montgomery County Inspector General's Report "Review of Certain Montgomery County Ethics Activities" dated April 9, 2012:

Recommendation 1: Financial Disclosure Business Process Ownership

The County Executive and Council should work with the Ethics Commission Staff Director/Chief Counsel to ensure that authority, accountability, and control for the logistical operation and enforcement of the financial disclosure filing process are clearly delegated. It is further recommended that a staff member be designated within each of the Executive and Legislative branches and Boards, Committees, and Commissions to be responsible for ensuring compliance with the financial disclosure filing requirements of the Public Ethics Law.

The action plan for Recommendation 1 that is presented by the CAO is reasonable, assuming the financial disclosure process continues to receive a high level of management attention.

The response of management to the IG Recommendation 1 to secure roles and responsibilities is an interim response. There are a great number of variables, manual processes, and gaps in systems design. Continued attention to these issues through the steps identified in the CAO's response will provide an opportunity for a more holistic approach to roles and responsibilities than is currently possible.

Recommendation 2-a: Reduce Employment Notification Timeframes

We recommend that the Office of Human Resources implement procedural changes designed to eliminate the delays that prevent the Ethics Commission from providing FDS access to employees on their start dates.

The EC agrees that current steps being taken by the CAO should improve compliance by initial filers with requirements. It is noted that these steps are being taken within the limitations of current system design, which hinders access as a result of multiple and independent manual input requirements.

Recommendation 2-b: Enhance ERP/FDS Interface Design

To strengthen internal controls and reduce the workload of the Ethics Commission program specialist, we recommend the Department of Technology Services in coordination with the Office of Human Resources and the Ethics Commission address the design anomaly and enhance the ERP/FDS interface software to cause the FDS interface to only transmit HCM changes that relate to a relevant FDS filing status.

The first step in complying with the recommendation, process mapping by DTS of the existing FDS system, is well underway. In the longer term, DTS will consider this recommendation in the context of new identity management capabilities. In the meantime, the Executive Branch's guidance to HR liaisons is intended to improve the quality of information received by the EC. Defective information is still communicated to the EC through the HR interface, which can only be resolved through research and contacts with HR Liaisons and others.

Recommendation 2-c: Address System Access Delays

We recommend that Department of Technology Services (DTS), in coordination with the Office of Human Resources (OHR) and the Ethics Commission Staff Director/Chief Counsel, modify the design of policies, procedures, and systems to enable initial filers to timely access the FDS and comply with the 15 day filing requirement of the Public Ethics Law.

As identified in response to Recommendation 2-a, above, the Executive Branch is strengthening its policies and procedures to facilitate the filing of timely reports by initial filers. As regards electronic systems, no major change is being undertaken at this time, although there are a number of minor system improvements that are being worked on. Some system changes may occur in the future once the system has been mapped by DTS and new capabilities are assessed as regards the County's implementation of identity management systems.

Recommendation 3-a: Review and Streamline the Annual Reporting Processes

We recommend that the Chief Administrative Officer modify the procedures and shorten the reconfirmation process timeframe to annually identify and approve the individuals subject to financial disclosure. These changes should be designed to effect the Executive and Legislative branch and Boards, Committees and Commissions compliance with the annual financial disclosure requirements of the Public Ethics Law.

Any significant action on this recommendation would likely require legislative change. The Ethics Commission is reviewing the Public Ethics Law's requirements as regards designation of filers with a view towards making some recommendations for legislative action.

Recommendation 3-b: Formalize and Document Deadline Extension

We recommend that any extension of the financial disclosure filing deadline be granted only by the Ethics Commission, that such extension be subject to documented deliberation as to cause, reason, and benefit, and that the Commission's review and approval be recorded in the Ethics Commission's Minutes.

The Ethics Commission is now documenting all extensions granted.

Recommendation 3-c: Develop and Enforce Policies about Delinquent Filers

We recommend that the Chief Administrative Officer, in coordination with the Ethics Commission, develop and distribute written policies as to the handling of delinquent filers and non-filers of financial disclosures. These policies should address annual and change of employment status filings.

The EC has been working with the CAO as regards the handling of delinquent filers and non-filers of financial disclosure reports. The CAO's new policies that are aimed at obtaining greater and timelier compliance should have substantial effect in reducing the number of delinquent filers. The CAO has taken steps to improve its follow-up with recalcitrant filers. It has placed increasing responsibility on HR liaisons to conduct the follow-up. The CAO has directed DTS to provide the HR liaisons with read-only access to the FDS database for purposes of checking on compliance with filing requirements by Department employees. This access is under development.

As regards members of Boards Commission and Committees a host of challenges to gaining full compliance with requirements are presented. System weaknesses, Ethics Commission resources, and inadequate management framework to compel filings result in greater noncompliance by BCC members than other public employees. The Ethics Commission is placing a high priority

on addressing this systemic challenge and anticipates the new Program Manager I will help facilitate this activity.

In the longer term, a structured approach towards addressing delinquencies will need to be established. This is not a simple task as the FDS was not designed with a view towards the reliable identification of delinquents and their status as filers. It is hoped that as DTS completes the mapping this issue will be addressed.

Recommendation 4: Enforce or Modify the Penalty Language of the Public Ethics Law

We recommend either enforcement of the law that requires final pay be withheld from individuals who have not filed a final disclosure, or, alternatively, the Ethics Commission propose legislative changes to the County Code that would establish a filing deadline and non-compliance penalty provision that can be enforced.

The CAO is taking steps to enforce this legal requirement; the Ethics Commission believes the requirement is appropriate and should be enforced.

Recommendation 5: FDS Software Modification

We recommend that DTS conduct a requirements and capability analysis of FDS notifications and tracking. Based on the results of that review, DTS could modify the FDS to enable better compliance with the financial disclosure ethics laws. Such modification should also include the development of an alternative, manually completed disclosure report that can be used as a permanent fail-safe back up to the automated disclosure system. The FDS could better support the Public Ethics Law by more actively prompting financial disclosure filers and reviewing managers to timely meet their obligations.

DTS is currently mapping the Financial Disclosure System. It is also executing a number of minor modifications which are intended to improve the FDS. Consideration is being given to whether the system can (and should within the context of the existing system paradigms) be modified to allow public access and file a financial disclosure report independent of the several manual steps currently necessary to make the system available for filing.

Recommendation 6: Revise Outside Employment Approval Practices

We recommend that the Ethics Commission implement the procedural and/or systemic changes necessary to timely meet the Outside Employment Approval responsibilities delegated to it in the Public Ethics Law.

The Ethics Commission is not currently resourced to always be able to execute this approval process in a timely fashion. The addition of a new Program Manager I should help with processing time. The Ethics Commission will take under consideration whether the laws and regulations governing the outside approval process can be improved to result in a more efficient utilization of resources.

Recommendation 7-a: Document Procedures in a Manual

We recommend that the Ethics Commission document procedures that describe the automated and manual procedures the current program specialist and staff director/chief counsel monitor or personally perform. The descriptions should be in sufficient detail to permit another person's understanding and performance of the steps therein.

The Ethics Commission recognizes that procedure manuals are necessary for the sustainable operation of the Ethics Commission's programs. The Ethics Commission is hiring a new Program Manager I who is expected to assist in the updating of and development of procedure manuals for Ethics Commission program and administrative operations.

Recommendation 7-b: Evaluate and Modify Staffing Workload

We recommend that the Ethics Commission streamline or eliminate procedures where feasible. The Ethics Commission should pursue increased use of automation in the Financial Disclosure, Lobbyist Registration, and Outside Employment Approval Request activities.

With the employment of the Program Manager I, the Commission will be able to establish appropriate procedure manuals. Writing the document will enable a review process whereby the Commission can streamline or eliminate procedures where feasible. The Commission is pursuing increased use of automation. Progress has been made with the implementation of an electronic lobbying registration function that should reduce workload and increase functionality. This system was budgeted for in FY13 and the registration portion of this function is nearing completion. Implementation of that system is anticipated for calendar year 2013 use. As noted above, activity is ongoing to improve automation for the FD system and improvements to the framework for processing Outside Employment Approval Requests are under consideration.



MONTGOMERY COUNTY ETHICS COMMISSION

October 22, 2012

To: Government Operations & Fiscal Policy Committee

From: Robert Cobb Nolunta Christ Staff Director/Chief Counsel

Subject: Summary of Status of the Response to Inspector General's "Review of Certain Montgomery County Ethics Activities"

The bullets below summarize the points made in the attached Memorandum addressing the status of the response to the IG review.

Financial Disclosure

- Management processes necessary to improve compliance with financial disclosure requirements are being implemented;
- System design challenges are complex and not easily resolved; critical preliminary steps are being taken, but long term solutions have not yet been defined;
- Progress is dependent on continued commitment of all concerned parties;
- The Ethics Commission is reviewing the financial disclosure sections of the Public Ethics Law with a view towards making recommendations to the County Council for legislative reform.

Other Ethics Commission Programs and Operations

- The Ethics Commission's hiring of a Program Manager I will materially advance the Commission's ability to execute its responsibilities; the Commission expects the position to be filled very soon;
- An electronic lobbying registration system should be in operation for calendar year 2013 registrations.



CAO Audit Response Form

Audit Report Title: Review of Certain Montgomery County Ethics Activities

Auditor's Organization: Office of the Inspector General

Audit Report #: IG12/4/9 issued on May 29, 2012 - CAO's response to IG's draft report of March 14, 2012 was issued on April 2012 (copy attached)

Respondents: Fariba Kassiri, ACAO; Marc Hansen, County Attorney; Joe Adler, Director, OHR; Sonny Segal, Director, DTS

Auditee Point of Contact: Fariba Kassiri, ACAO Date Final Report Issued to Respondents: 7/9/2012 Date Action Plan Due from Respondents: 9/9/2012

Respondents' Action Plans

	IG Audit Report Recommendations	Date Action Plan Submitted to CAO	Projected Implementation Date	Date Implemented (if Applicable)	Comments/Obstacles/Steps Involved (attach supporting documents if applicable)
1	Kassiri/CAO's Office in coordination with Ethics Commission & Council Executive and Council should work with the Ethics Commission (EC) to ensure authority, accountability, and control for the operation/enforcement of filing process are delegated. Assign staff to oversee compliance. (Report page 7)	On hold until 8/20/13			At 9/21/12 coordination meeting held with the key players (EC, CC, IG, County representatives), it was agreed that the next step would be to define the roles and responsibilities, and map the current system/process before developing an action plan. Also, as confirmed by the IG, this recommendation intended to highlight the key issues related to FDS and enforce systematic resolution of those issues. It was decided that resolution of this summary recommendation would best wait until the remaining IG recommendations are implemented, FDS process is mapped and roles/responsibilities are better defined.
2 a	Adler/OHR in coordination with DTS & Ethics Commission OHR implement procedural changes designed to eliminate the delays that prevent EC from providing FDS access to employees on their start dates. (Report page 9) See note 1 below	8/20/2012			Refer to CAO memo of August 20 regarding "Internal Process Changes to Ensure Compliance with the Public Ethics Law". New process for initial and final filers already put in place. Within one year, but no later than 8/20/2013, DTS will start annual reporting on the percentage (%) of initial fillings submitted within 15 days of hire to track progress. The IG report showed 86% delinquency. In addition, County's newly implemented internal process changes, including creation of the online compliance reports and an automated bi-weekly delinquency report to both reviewers and HR liaisons, will improve the process.
2b	DTS, in coordination with OHR and the EC, address the design anomaly and enhance the ERP/FDS interface software to cause the FDS interface to only transmit HCM changes that relate to a relevant FDS filing status. (Report page 10) See note 1 below	Will be visited again around March/April 2013	Will be visited again around March/April 2013		As agreed at 9/21/12 coordination meeting, we need to map the current system to fully understand the issues before making any changes. DTS has a task order in place for documenting the current system and business processes. The initial draft will be completed by December 2012 and, in very close coordination with EC, will be finalized by March/April of 2013. In the meantime, County's newly implemented internal process changes, including creation of the online compliance reports and an automated bi-weekly delinquency report to both reviewers and HR liaisons, will improve the process.
2 c	DTS, in coordination with OHR and the EC Staff Director/Chief Counsel, modify the design of policies, procedures, and systems to enable initial filers to timely access the FDS and comply with the 15 day filing requirement of the Public Ethics Law. (Report page 12) See note 1 below	8/20/2012			Refer to CAO memo of August 20 regarding "Internal Process Changes to Ensure Compliance with the Public Ethics Law". New process for initial and final filers already put in place. Within one year, but no later than 8/20/2013, DTS will start annual reporting on the percentage (%) of initial fillings submitted within 15 days of hire to track progress. The IG report showed 86% delinquency. In addition, County's newly implemented internal process changes, including creation of the online compliance reports and an automated bi-weekly delinquency report to both reviewers



CAO Audit Response Form

	IG Audit Report Recommendations	Date Action Plan Submitted to CAO	Projected Implementation Date	Date Implemented (if Applicable)	Comments/Obstacles/Steps Involved (attach supporting documents if applicable)
3а	Hansen/OCA in coordination with OHR & Ethics Commission CAO modify the procedures and shorten the reconfirmation process timeframe to annually identify and approve the individuals subject to financial disclosure. These changes should be designed to effect the Executive and Legislative branch and Boards, Committees, and Commissions compliance with the annual financial disclosure requirements of the Public Ethics Law. (Report page 14)	in progress	in progress	In progress	Need further discussion w/Council and Ethics Commission.
3с	The CAO, in coordination with the EC, develop and distribute written policies as to the handling of delinquent filers and non-filers of financial disclosures. These policies should address annual and change of employment status filings. (Report page 16) See note 1 below	8/20/2012			Refer to CAO memo of August 20 regarding "Internal Process Changes to Ensure Compliance with the Public Ethics Law". New process for initial and final filers already put in place. Within one year DTS will start annual reporting on the progress made in reducing the delinquencies in each of the areas highlighted in the IG report. We believe, in addition to this process change, creation of the online compliance reports and an automated bi-weekly delinquency report to both reviewers and HR liaisons, will improve the process.
4	Hansn/OCA in coordination with OHR & Finance Enforcement of the law that requires final pay be withheld from individuals who have not filed a final disclosure. (Report page 18)	8/20/2012	Within a year, but no later than 8/20/2013, OHR will report on the results.		Refer to CAO memo of August 20 memo regarding "Internal Process Changes to Ensure Compliance with the Public Ethics Law". New process for initial and final filers already put in place. Within one year DTS will report on the progress made in reducing the delinquencies in each of the areas highlighted in the IG report. We believe, in addition to this process change, creation of the online compliance reports and an automated bi-weekly delinquency report to both reviewers and HR liaisons, will improve the process.
5	Kassiri/CAO's Office in coordination with Ethics Commission DTS conduct a requirements and capability analysis of FDS notifications and tracking. Based on the results of that review, DTS could modify the FDS to enable better compliance with the financial disclosure ethics laws. Such modification should also include the development of an alternative, manually completed disclosure report that can be used as a permanent fail-safe back up to the automated disclosure system. The FDS could better support the Public Ethics Law by more actively prompting financial disclosure filers and reviewing managers to timely meet their obligations. (Report page 19)	Will be visited again around March/April 2013	Will be visited again around March/April 2013	. 0	As agreed at 9/21/12 coordination meeting, we need to map the current system to fully understand the issues before making any changes. DTS has a task order in place for documenting the current system and business processes. The initial draft will be completed by December 2012 and, in very close coordination with EC, will be finalized by March/April of 2013. In the meantime, County's newly implemented internal process changes, including creation of the online compliance reports and an automated bi-weekly delinquency report to both reviewers and HR liaisons, will improve the process.

NOTE 1: On 5/3/12, the GO committee disagreed with the prior joint decision of the EC and the CAO to transfer logistical operations of the FDS to the Executive Branch. Therefore, at the GO committee's request, the EC Commission and the CAO reversed their decision and agreed to keep the responsibility for logistical operations of the system with the EC. In addition, the Council authorized additional human and funding resources to the EC.

NOTE 2: Recommendations 3b, 6, 7a, and 7b are directed to the Ethics Commission, which does not fall under the direction of the CAO. Therefore, those recommendations are not included in this form.





Annual Report of Activity for the Fiscal Year Ended June 30, 2012

October 1, 2012



Key Outcomes

The BOE's Fiscal Management Committee and the Council's Education Committee considered and implemented some changes to MCPS' Monthly Financial Reporting in July 2012. Discussions have taken place and continue between the MCPS and Council staff. MCPS developed a sample revised monthly financial report they plan to begin submitting at the end of September, 2012 and agreed to provide other reports that address the recommendations of the OIG report. During the summer, the Council Education Committee held a hearing at which the Committee discussed the revised reports MCPS planned to provide and the extent to which those reports satisfy or fall short of providing information needed by the Council. A follow-up hearing is scheduled for late October, 2012. Further discussions and additional actions are anticipated.

Review of Certain Montgomery County Ethics Activities (April 2012)

Background

Montgomery County has enacted a Public Ethics Law applicable to its elected officials, public employees, and members of Boards, Commissions, and Agencies. This Law also sets requirements for private individuals who seek to influence the actions of the County. The Inspector General, Deputy Inspector General, and Assistant Inspector General each had difficulty accessing the County's Financial Disclosure System to complete an initial financial disclosure, and became concerned following a July 15, 2011 meeting, in which the newly appointed Ethics Commission Staff Director/Chief Counsel acknowledged problems with the process, and suggested that the Office of Inspector General conduct an independent review.

The objectives of our review were to determine whether a.) required procedures are documented and in compliance with State of Maryland and Montgomery County Codes, and b.) implemented procedures and internal controls are consistent with required procedures.

Key Points in the OIG Report

We found widespread noncompliance with financial disclosure filing deadlines, due to poor communications, poor coordination among County departments and systems, and enforcement shortcomings. 86% of the initial financial disclosure reports we tested were not submitted within the statutory deadline of 15 days after commencing service with the County. 29% of all 2010 annual financial disclosure reports were submitted after the extended deadline of May 15, 2011, and 4% had not been submitted as of January 17, 2012 - the date of our final testing. 30% of the final disclosure reports we tested were filed after the last day of employment—the statutory deadline.

There is no overarching entity within Montgomery County Government that has the authority, accountability, and control to ensure that the financial disclosure reporting process operates in accordance with the Public Ethics Law. For example, hiring departments must submit timely notices of employment changes, department managers must ensure their staff members submit timely disclosures, and other departments must correct system interface errors. We found that

the financial disclosure system (FDS) does not provide adequate follow-up notifications to filers and reviewing managers. We observed that a significant number of initial and final financial disclosure reporting delinquencies resulted from filers' inability to access the FDS, precluding them from timely, on-line disclosure submission. We found that the County does not enforce the Public Ethics Law's mandatory and discretionary penalties for delinquent filers and non-filers. We found that the Ethics Commission office has not put its many manual procedures in writing, which is an operating risk, given the office has only two staff members.

To effectively implement the Public Ethics Law, the causes that contribute to delay in completing Financial Disclosure forms must be addressed. We recommended that the County Executive and Council work with the Ethics Commission Staff Director/Chief Counsel to ensure authority, accountability, and control for the logistical operation and enforcement of the financial disclosure filing process is clearly designated. Steps should be undertaken to modify the design of the Enterprise Resource Planning/FDS interface that routinely transfers data from the County's human resources systems to its financial disclosure system in order to eliminate any manual re-entry of data. The process to identify, approve, and distribute notifications to individuals subject to annual financial disclosure reporting should be modified to eliminate operational delays that now exist. The assignment of system access privileges should be modified to eliminate delays for initial filers to gain access to the disclosure system. An alternative, manual financial disclosure process should be developed as a failsafe back up to the current on-line system. The Ethics Commission should reduce manual processing workloads by streamlining procedures, and further automating its financial disclosure, lobbyist registration, and outside employment systems.

Key Points in the Ethics Commission Staff Director and County Chief Administrative Officer's Responses

The CAO and Chief Counsel/Staff Director of the Ethics Commission were each asked to respond to the majority of the report's findings. Three findings were directed solely to the Ethics Commission. Generally, the CAO and Chief Counsel agreed with the report's findings, with each stating his reasoning for partial concurrence with a few recommendations. The CAO's response provided discussion of corrective actions, systems enhancements, and procedural changes that would be undertaken, while the Chief Counsel's response addressed several policy considerations and anticipated procedural changes given the limited resources of the Commission.

Many of the CAO's anticipated corrective actions were predicated upon the mutual agreement between the CAO and the Ethics Commission to transfer logistical operation of the Financial Disclosure System to the Executive Branch.

Key Outcomes

The report's findings and recommendations were agreed to by the CAO and the Ethics Commission in a manner that was consistent with the actions we had recommended. On May 3, 2012, the Government Operations and Fiscal Policy Committee of the County Council requested that the CAO and Ethics Commission reverse their decision to transfer logistical operation of the

Financial Disclosure System to the Executive Branch, reaffirming its preference that all disclosure activities remain within the purview of the Ethics Commission. The Council authorized additional human and funding resources to aid the Ethics Commission in its effort to address the report's recommendations.

On August 20, 2012, the CAO distributed a memorandum to Executive Branch Department and Office Directors announcing "Internal Process Changes to Ensure Compliance with the Public Ethics Law" designed to ensure conformity with the Public Ethics law. The memorandum additionally announced a partnership with the Ethics Commission to determine a more comprehensive solution for handling required disclosure filings.

The CAO memorandum puts in place a new process for initial and final filers and includes creation of online compliance reports as well as an automated bi-weekly delinquency report to both reviewers and HR liaisons. By August 2013, the CAO will start annual reporting on the percentage of initial fillings submitted within 15 days of hire to track progress.

A task order is in place for documenting the current system and business processes. The initial draft is to be completed by December 2012 and, in coordination with the Ethics Commission, will be finalized by March/April of 2013. In the meantime, County's newly implemented internal process changes, including creation of the online compliance reports and an automated bi-weekly delinquency report to both reviewers and HR liaisons, will improve the process.

In September, 2012, a meeting was held with key representatives from the office of the CAO, the Ethics Commission, the County Council staff, and the OIG in attendance. Implementation of those steps contained in the August 20, 2012 memorandum, and the future steps to address each OIG recommendation were discussed.

Office of Human Rights' Management of Purchasing Cards and Space Renovation (May 2012)

Background

The Montgomery County Office of Human Rights (OHR) investigates complaints of discrimination, provides staff support to County commissions, and conducts educational and other programs to promote equal rights and opportunities. The Office of the Inspector General (OIG) received allegations regarding misuse of OHR's Purchasing Cards (P-Cards). The OIG also received reports expressing concerns about the potential waste of taxpayer dollars for renovation of space for OHR's use. Our objectives were to determine: 1. If OHR's use of P-Cards was in compliance with County policies and procedures, 2. If OHR's space renovation project adhered to the County's policies and procedures, 3. If the costs associated with OHR's space renovation were in compliance with contractual language, and 4. If P-Cards were used for the space renovation.



MONTGOMERY COUNTY ETHICS COMMISSION

MEMORANDUM

October 3, 2012

To: Nancy Navarro, Chair, Government Operations and Fiscal Policy Committee

From: Robert Cobb, Chief Counsel/Staff Director, Ethics Commission

Subject: Lobbying Fees and Related Matters/Response to Memorandum dated July 5, 2012

Below are the questions from your July 5, 2012, Memorandum with my responses on behalf of the Ethics Commission:

1. Please provide a general overview of county and state laws as they relate to lobbying. Please Provide a list of all lobbyists registered in Montgomery County for each of the past five years.

State lobbying laws typically require lobbyists to register and to identify themselves, their clients, what activity is being lobbied for, who is being lobbied (with varying levels of specificity), how much money is spent on the lobbying activity and what it is being spent on. Triggers for registration and fees charged by states vary. Significantly, Montgomery County's

http://www.followthemoney.org/content/FINAL_50-StateLobbyingReport.pdf

Two national surveys of lobbying laws in 50 states can be found at:

http://www.opencongress.org/wiki/State_Lobbying_Disclosure_Requirements#State-by-State_Disclosure_and http://www.ncsl.org/legislatures-elections/ethicshome/50-state-chart-lobbyist-registration-requirements.aspx

¹ Research summarizing state lobbying laws can be found at:

lobbying laws are required by Maryland law to be "substantially similar" to the lobbying provisions in the State law, but can be modified to the extent deemed necessary and appropriate.²

The published lists of lobbyists in Montgomery County for the years 2007, 2008, 2009, and 2011 are attached to this Memorandum. The Ethics Commission did not publish a list of registered lobbyists for 2010.

2. At the worksession, you explained that lobbying organizations are required to pay a lobbying fee for each of its clients. Should the law be amended to require lobbying organizations to pay one fee per lobbyist?

Yes, consistent with the registration requirements for lobbyists registering to lobby with the Maryland State Ethics Commission, the Ethics Commission believes the Public Ethics Law should be amended to make clear that every person conducting lobbying activities for a client should separately register to lobby. This would constitute a change from current practice in Montgomery County, which is for only one lobbying registration and fee to be paid per representation by a firm of a client.

3. Does the Ethics Commission currently have a system in place to enforce the State and County Ethics Law as it relates to lobbying in Montgomery County? If not, what mechanism would the Commission recommend to do so? Would it require additional staffing and how would it fit in with Commission priorities?

The Ethics Commission has no jurisdiction over State lobbying requirements. As for County requirements, the Commission has no enforcement program in place. On an *ad hoc* basis, lobbyists are informed of filing requirements they have not complied with so that they will become compliant. Lobbyists have been allowed to correct filings without penalty. The Ethics Commission does not have sufficient staff resources to enforce lobbying registration and reporting requirements. A prerequisite for aggressive enforcement is the establishment of sound and consistent program operations. After establishing this, with due notice to lobbyists of changing expectations, an enforcement program modeled on the State Ethics Commission's use of consent orders could be implemented. The aid of the County Attorney's office would be needed to pursue the consent orders. The ramping up of the lobbying enforcement program would require/necessitate more resources being dedicated to Ethics Commission programs and operations.

http://ethics.gov.state.md.us/brownpamphlet.htm



² A summary of the Maryland Public Ethics Law, including a review of the lobbying provisions, prepared by the Maryland State Ethics Commission can be found at:

4. What is the Commission's view on increasing the lobbyist registration fee? Does the Commission perceive that there is a registration gap? If so what steps can be taken to fill this gap?

The Commission believes that raising the lobbyist registration fee is unnecessary; the Commission takes this view because changing the fee structure as described in response to question 2 will raise lobbying revenue in a manner that is weighted towards having those who engage the greatest number of individuals to lobby on their behalf to pay the greatest amount in fees.

The Commission has no basis to reach conclusions on whether there is a gap between who is required to register and who is actually registering to lobby. Presumably, a well-thought out educational campaign to promote compliance with lobbying requirements would advance entities' knowledge of those requirements. So, for example, requiring County offices to post information about lobbying registration requirements and making handouts available in conspicuous locations around County government might increase overall knowledge of lobbying registration requirements and encourage those who are unaware of lobbying requirements or are inclined to ignore them to register as required.

5. Does the Ethics Commission believe the current lobbying fee for nonprofit organizations is appropriate?

Currently, yes. If changes to the Public Ethics Law are considered, this topic could be examined as part of that process.

CC: Valerie Ervin, Member, Government Operations and Fiscal Policy Committee Hans Riemer, Member, Government Operations and Fiscal Policy Committee



MONTGOMERY COUNTY COUNCIL ROCKVILLE, MARYLAND

OFFICE OF COUNCILMEMBER NANCY NAVARRO

MEMORANDUM

July 5, 2012

TO:

Robert Cobb, Chief Counsel/Staff Director, Ethics Commission

FROM:

Nancy Navarro, Chair, Government Operations and Fiscal Policy Committee

SUBJECT:

Lobbyist Registration Fee

Following up on the June 25th Government Operations and Fiscal Policy Committee worksession on the Lobbyist Registration Fee, I am providing a list of questions so the Committee can better understand the existing State and County Ethics Law as it relates to the collection of the lobbyist registration fee.

- 1. Please provide a general overview of county and state laws as they relate to lobbying. Please provide a list of all lobbyists registered in Montgomery County for each of the past 5 years.
- 2. At the worksession, you explained that lobbying organizations are required to pay a lobbying fee for each of its clients. Should the law be amended to require lobbying organizations to pay one fee per lobbyist?
- 3. Does the Ethics Commission currently have a system in place to enforce the State and County Ethics Law as it relates to lobbying in Montgomery County? If not, what mechanism would the Commission recommend to do so? Would it require additional staffing and how would it fit in with Commission priorities?
- 4. What is the Commission's view on increasing the lobbyist registration fee? Does the Commission perceive that there is a registration gap? If so what steps can be taken to fill this gap.
- 5. Does the Ethics Commission believe the current lobbying fee for nonprofit organizations is appropriate?

If you have any questions or require any clarification, please contact my chief of staff, Adam Fogel or Justina Ferber on the Council's central staff.

CC:

Valerie Ervin, Government Operations and Fiscal Policy Committee member Hans Riemer, Government Operations and Fiscal Policy Committee member

MEMORANDUM

TO:

Government Operations and Fiscal Policy Committee

FROM:

Justina J. Ferber Hagislative Analyst

SUBJECT:

Discussion with Ethics Commission: Lobbyist Registration Fee

Those expected to attend the worksession:

Nina Weisbroth, Chair, Ethics Commission Stuart Rick, Vice-Chair, Ethics Commission Kenita Barrow, Ethics Commission Member Robert Cobb, Chief Counsel/Staff Director, Ethics Commission

Below is a very brief background of the GO Committee and Council discussions of the Lobbyist Registration Fee issue:

May 2010: In 2010 the County Executive's proposed FY11 budget shifted the staff of the Ethics Commission into the County Attorney's office. The Council did not agree to the shift but did agree to eliminate one of the three positions in the Ethics Commission office. The Council also recommended that the Commission double the lobbyist registration fee to \$250 with the intent to assist the County in funding technology improvements for the Commission. Doubling the fees to \$250 was projected to add \$21,875 in revenue. The current fee of \$125 was established by Regulation 21-08 in September 2008.

May 2011: In 2011, during FY12 budget discussions, the Ethics Commission's Executive Secretary advised that the Commission had discussed the registration fee increase but did not want to raise the fee unless fee revenue was specifically dedicated to the Commission to fund technology improvements to the office. Councilmembers felt that additional revenue could provide a source of funds to enhance the work of the office and therefore recommended the lobbyist registration fee be doubled to \$250. The GO Committee recommended that the Executive Secretary obtain up-to-date information from DTS on the cost of technology improvements for web-based lobbying registration.

May 2012: The FY13 budget included funding of \$54,900 for web-based lobbying registration. The Executive's proposed FY13 Operating Budget added a new position in the Office of Human Resources to focus on the financial disclosure process and address some of



the issues raised in the IG's report. In adopting the FY13 budget, the Council shifted the proposed position to the Ethics Commission office.

The Council also recommended that the County conduct a comprehensive review of the financial disclosure system, to include a process review and an evaluation of the electronic system for financial disclosures so that responsibilities are assigned appropriately, accountability is ensured and the electronic system facilitates compliance with the Public Ethics law.

The GO Committee was concerned that the recommended increase in the lobbyist registration fee had not been implemented by the Commission. It was noted that in mid-2011 the Ethics Commission office completed its conversion in leadership from the Executive Secretary to the Chief Counsel/Staff Director, and the issue of the lobbying registration fee had gone astray in the transition. The Committee was advised that the lobbying fees could not be increased in FY11 or FY12 because the law does not allow fees to exceed the cost of administering the lobbyist registration program. It was explained that the FY11 budget reduction of \$59,760 for one full-time Program Specialist II position that processed lobbyist fees had reduced costs such that the proposed increase in the lobbyist registration fee for FY12 would have exceeded the cost of the lobbying registration program and thus would have violated the law.

The law provides at §19A-23 (e):

The Commission may charge each lobbyist a reasonable annual registration fee in an amount set by an Executive regulation adopted under method (2). The revenue to be raised by the fee must not exceed the cost of administering this Article.

The Council adopted the FY13 budget with the increased funding for web-based lobbying registration and the new position and again recommended that the lobbyist registration fee be raised to \$250. Councilmembers concluded that the fee could be raised because of the additional funding provided in the Commission's FY13 budget for lobbying registration. The Committee asked Commissioners to consider the increased fee.

June 2012: The Ethics Commission met June 12 and tabled its discussion of the lobbyist registration fee until after the GO Committee meeting of June 25, when the fee issue could be discussed between Commissioners and Councilmembers.

Taking into consideration the concerns of Councilmembers and the Ethics Commission, below are issues to consider when discussing the increased lobbyist fee recommended by the Council:

Cost of the program and compliance with the law: The additional funding for the webbased lobbying registration program in FY13 will increase the cost of the program above the fee revenue raised. Currently there are 87 lobbyists with paid registrations for calendar year 2012. (87 X 125 = 10,875; 87 X 250 = 21,750) The cost of the program will decrease after FY13 because the one-time funding in FY13 for technology improvements will not recur; however, costs for 4 workyear to administer the program (1/2 X 10) workyear to administer the program (1/2 X 10)

compensation budgeted for 1.0 FTE = \$27,595) would continue to exceed collections at the \$250 fee level assuming that the administration of the program entails ½ a workyear. Technology improvements could reduce the amount of staff time and cause an increase in registration fees to exceed the cost of administering the registration program. The amount of staff time, current and future, for the lobbyist registration program should be discussed with the Chief Counsel/Staff Director. Costs for administering the lobbying registration program should be evaluated annually to ensure compliance with the law.

The Council could consider amending the law to eliminate the requirement that fees not exceed the cost of administration, but the law as written now assures that the County is not susceptible to legal challenge. See <u>American Civil Liberties Union of Illinois v. White</u>, N.D. Ill, (Feb. 10, 2012). In that case, the ACLU challenged the State of Illinois regarding its lobbying registration fee, which had been raised to \$1000, on the grounds that the fee was a "levy" on protected speech which exceeded the cost to administer the lobbying regulations.

Impact on Nonprofits: During the Committee's discussion of the lobbyist registration fee, concern was expressed about the cost to nonprofit organizations. Commissioners also expressed this concern. The law can be amended to provide a lesser fee for nonprofits or to raise the dollar threshold which triggers the requirement for nonprofit organizations to register as a lobbyist (currently \$500 in expenses or compensation). The Council should obtain the views of Commissioners on this issue. If a legislative amendment is proposed, a public hearing must be held and nonprofits will have the opportunity to testify.

Other jurisdictions: The Ethics Commission expressed concern that the County would charge a lobbyist registration fee that is not in line with other jurisdictions. The County over many years has implemented fees not charged in other jurisdictions or has charged higher fees than other jurisdictions; consequently this would not be the first time the County had the highest fee. During previous discussions, Councilmembers expressed the view that the increased fee was reasonable and affordable to Montgomery County lobbyists and did not give weight to the comparison with other jurisdictions. Since the fee applies to less than 100 entities, the notion that an increased fee would give the appearance of a less friendly business environment is a lesser factor for consideration. Councilmembers expressed the view that the fees would fund a better, more efficient lobbyist registration program, which would benefit lobbyists.

Alternatively, the increase in fees would require a change in an Executive Regulation which would be advertised and comments requested. If there was convincing testimony from businesses, attention would certainly be given to their position.

Should the Council set the fee? Currently the law provides that the Ethics Commission is the entity that "may" charge the fee. However, the law can be amended to allow the Council to establish the fees for lobbyist registration. An example of an adjudicatory board with fees established by the legislature would be the Board of License Commissioners. Alcohol license

fees implemented and enforced by the Board are enacted into law by the State legislature. In this County transit fares and other transportation and parking fees are set by Council resolution.

Additional Item:

Public Information: During FY13 budget discussions, Councilmember Riemer requested that a discussion on how information is provided to the public be a part of the next meeting on Ethics issues. Because of the Committee's heavy agenda for this meeting, staff recommends the Commission be asked to submit information in writing which can be reviewed and then scheduled for a GO Committee discussion at a later date.

Attachments: 19A – Article V – Lobbying Disclosure ©1

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Article V. Lobbying Disclosure.

Sec. 19A-21. Who must register as a lobbyist; exceptions.

- (a) Any individual or organization must register as a lobbyist under this Article if, during a year, that individual or organization:
- (1) communicates with a public employee to influence legislative action by a County agency, and for that purpose either:
- (A) spends more than \$500, or
- (B) receives compensation, including a pro-rated part of a salary or fee for services, totaling more than \$500; or
- (2) communicates with a public employee to influence executive or administrative action by a County agency, and for that purpose spends a total of more than \$500 for:
- (A) meals and beverages;
- (B) transportation;
- (C) lodging;
- (D) provision of any service;
- (E) one or more special events; and
- (F) one or more gifts.
- (b) In this Article, legislative action does not include any matter covered by subsection 19A-15(b).
- (c) This Article does not apply to:
- (1) drafting bills or advising clients about proposed or pending legislation without any other attempt to influence the legislative process;
- (2) communicating with a County agency when requested by the agency, without engaging in any other activity to influence legislative, administrative, or executive action on the subject of the communication;
- (3) communicating with a County agency as an official act of an official or employee of the state, a political subdivision of the state, or the United States, and not on behalf of any other person or business;

- (4) actions of a publisher or working journalist in the ordinary course of disseminating news or making editorial comment to the general public, without engaging in other lobbying that would directly and specifically benefit the economic interests of a specific person or business;
- (5) appearing before a County agency at the request of a lobbyist if the witness:
- (A) takes no other action to influence legislative, administrative, or executive action; and
- (B) identifies himself or herself as testifying at the request of the lobbyist;
- (6) communicating on behalf of a religious organization for the sole purpose of protecting the right of its members to practice the doctrine of the organization;
- (7) communicating as an official duty of an officer, director, member, or employee of an organization engaged exclusively in lobbying for counties or municipalities, and not on behalf of any other person or business;
- (8) an action of any person representing an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code if:
- (A) the action promotes the exempt purposes of the organization; and
- (B) the organization gave gifts totaling less than \$500 to public employees in a year; and
- (C) the representative is paid or spends less than \$1,000 in a year to influence executive, administrative, and legislative action.
- (d) Except for the authorization required by Section 19A-22, an individual or organization is exempt from the reporting requirements of this Article if the individual or organization:
- (1) compensates one or more lobbyists;
- (2) reasonably believes that each lobbyist will timely register and report all expenditures required to be reported; and
- (3) engages in no other lobbying.

If a lobbyist fails to report timely any information required under this Article, the lobbyist's employer is immediately subject to the reporting requirements of this Article. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1; 2004 L.M.C., ch. 28, § 1.)

Sec. 19A-22. Authorization to lobby.

Every employer of a lobbyist must sign an authorization to act, which the lobbyist must file with the Commission at registration. If the employer is a corporation, an authorized officer or agent other than the lobbyist must sign the written authorization. The authorization must include:

- (a) the full legal name and business address of both the employer and the lobbyist;
- (b) the period of time during which the lobbyist is authorized to act, unless sooner terminated; and
- (c) each legislative proposal or subject upon which the lobbyist is authorized to act. (1990 L.M.C., ch. 21, § 1.)

Sec. 19A-23. How and when to register as a lobbyist.

- (a) Every person required to register with the Commission under Section <u>19A-21</u> must disclose the following information on a form provided by the Commission:
- (1) the lobbyist's name and permanent address;
- (2) the name and permanent address of any person who will lobby on behalf of the lobbyist;
- (3) the name, address, and nature of business of any person who compensates the lobbyist, with the written authorization required under Section 19A-22; and
- (4) the identification, by formal designation if known, of each matter on which the lobbyist expects to lobby or employs someone to lobby.
- (b) This form must be filed not later than 5 days after an individual or organization first meets the requirements for registration under this Article.
- (c) A lobbyist must register separately for each employer.
- (d) Each lobbyist may file a notice of termination within 30 days after:
- (1) stopping any lobbying activity; and
- (2) filing the reports required under this Article.
- (e) The Commission may charge each lobbyist a reasonable annual registration fee in an amount set by an Executive regulation adopted under method (2). The revenue to be raised by the fee must not exceed the cost of administering this Article. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1.)

Sec. 19A-24. Compensation must not be contingent.

A person must not pay another person compensation that depends on or varies with the success or defeat of any legislative, administrative, or executive action by a County agency. (1990 L.M.C., ch. 21, § 1.)

Sec. 19A-25. Reports by lobbyist to the Commission.

- (a) Each registered lobbyist must file with the Commission, under oath:
- (1) a report covering the period from January 1 through June 30, filed by July 31; and
- (2) a report covering the period from July 1 through December 31, filed by January 31.
- (b) If the lobbyist is not an individual, an authorized officer or agent of the lobbyist must sign the form. Each lobbyist must file a separate report for each individual or organization that compensates the lobbyist.
- (c) Each report must include:
- (1) a complete and current statement of the information required under Section 19A-23;
- (2) total expenditures on lobbying in each of the following categories:
- (A) office expenses;
- (B) professional and technical research and assistance;
- (C) publications that expressly encourage persons to communicate with public employees;
- (D) names of witnesses and the fees and expenses paid to each;
- (E) meals and beverages for public employees or their immediate families;
- (F) special events, including parties, dinners, athletic events, entertainment, and other functions, to which all members of the Council or the governing body of an agency are invited;
- (G) expenses for food, lodging, and scheduled entertainment of public employees given in return for participation in a panel or speaking engagement at a meeting;
- (H) other gifts to or for public employees or their immediate families; and
- (I) other expenses;
- (3) total compensation paid to the lobbyist. If lobbying is only part of the person's employment, compensation means a prorated amount based on the time spent on

lobbying compared to the time spent on other employment activities. A prorated amount must be labeled as such; and

- (4) the name of each public employee or relative who receives, directly or indirectly, a gift given by a lobbyist or any person acting on behalf of a lobbyist, if the gifts have a total value of at least \$50 during the year. The lobbyist must list each gift by the date given, the beneficiary, the amount or value, and the nature of the gift.
- (d) Expenses reported in subparagraphs (c)(2)(F) and (G) need not be allocated to individual public employees. However, the lobbyist must specify the date, location, total expenses incurred, and the names of the employees who attended each event.
- (e) The Commission may require any lobbyist to submit additional reports or information to fulfill the purposes of this Chapter. (1990 L.M.C., ch. 21, § 1.)

Sec. 19A-26. Public inspection of lobbyist registration documents.

- (a) The Commission must maintain all required documents under this Article and make them available to the public for inspection and copying. The Commission may establish procedures and charge reasonable fees.
- (b) By September 30 and March 31 each year, the Commission must compute and make available to the public:
- (1) a subtotal under each category in paragraph 19A-25(c)(2) for each lobbyist;
- (2) a subtotal representing the combined total of subparagraphs 19A-25(c)(2)(E), (F), and (G), for each lobbyist; and
- (3) the total amount reported by each lobbyist for lobbying activities during the year.
- (c) If any report filed with the Commission contains the name of a public employee or relative as required under paragraph 19A-25(c)(4), the Commission must notify the public employee within 30 days after the report is filed.
- (d) After being notified that a public employee's or relative's name appears in a report, the public employee may, within 30 days after receiving the Commission's notice, file a written exception to the inclusion of the name. The Commission must include the exception in its files. (1990 L.M.C., ch. 21, § 1.)